

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Document #

16

USCA NO. _____

SDNY NO. 05-cv-0473

JUDGE: DC

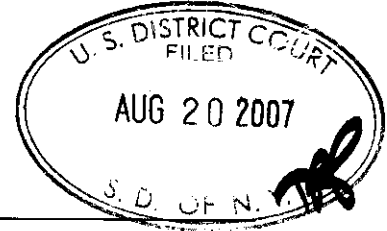
DATE: AUG. 20, 2007

Osorio

-v-

Conway

INDEX TO THE RECORD ON APPEAL



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FIRM APPEALS SECTION
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DISTRICT COURT DOCKET ENTRIES -----

DOCUMENTS

DOC#

Clerk's Certificate

See Attached List of Numbered Documents

☒ Original Record

☐ Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 20th Day of AUGUST, 2007.

United States District Court for
the Southern District of New York

Date: AUG. 20, 2007

U.S.C.A. # _____

U.S.D.C. # 05-w-0473

D.C. JUDGE DC

Ozorio

-v-

Conway

Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 15, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed

Document Description

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 20th Day of AUGUST In this year of our Lord, Two Thousand and Seven, and the Independence of the United States this 232ND year.

J. Michael McMahon, Clerk

By _____

Deputy Clerk

APPEAL, CLOSED, HABEAS

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:05-cv-00473-DC
Internal Use Only

Osorio v. Conway
Assigned to: Judge Denny Chin
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 01/14/2005
Date Terminated: 07/18/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Date Filed	#	Docket Text
01/14/2005	<u>1</u>	PETITION FOR WRIT OF HABEAS CORPUS pursuant to 28 U.S.C. 2254. (Filing Fee \$ 5.00, Receipt Number 530271). Document filed by Carlos Osorio. (laq,) (Entered: 01/24/2005)
01/14/2005		Magistrate Judge Ronald Ellis is so designated. (laq,) (Entered: 01/24/2005)
02/09/2005	<u>3</u>	ORDER the Clerk of Court shall serve a copy of this Order and Petition, by certified mail, upon Attorney General, State of New York, District Attorney, Bronx County, and shall also send a copy of this Order, by certified mail, upon Petitioner Carlos Osorio. The respondent shall file an answer by 03/11/2005. (Signed by Judge Denny Chin on 02/07/2005) (jeh,) (Entered: 02/25/2005)
02/09/2005		Set Answer Due Date purs. to [3] Order to Answer, as to James Conway answer due on 3/11/2005. (jeh,) (Entered: 02/25/2005)
02/22/2005	<u>2</u>	ORDER; petitioner's request for a stay of his petition is granted. Petitioner must pursue his state court remedies with respect to his ineffective assistance of counsel claim within 30 days of this Order...; if petitioner wishes to amend his petition to allege a claim of ineffective assistance of counsel after exhausting his state court remedies, he must do so within 30 days after his state court exhaustion is completed. the respondent's time to respond to the petition is stayed pending petitioner's exhaustion of his state court remedies. The Clerk of the Court shall place this case on the Court's suspense docket. (Signed by Judge Denny Chin on 2/18/05) (dj,) (Entered: 02/23/2005)
02/25/2005		Mailed a copy of [3] Order to Answer, to Carlos Osorio by Certified Mail # 7003 2260 0007 4176 5343 with Return Receipt Requested. (jeh,) (Entered: 02/25/2005)
02/25/2005		Mailed a copy of [3] Order to Answer, to Attorney General, State of New York by Certified Mail # 7003 2260 0007 4176 5350 with Return Receipt Requested. (jeh,) (Entered: 02/25/2005)
02/25/2005		Mailed a copy of [3] Order to Answer, to D.A. Office, Bronx County by Certified Mail # 7003 2260 0007 4176 5367 with Return Receipt Requested. (jeh,) (Entered: 02/25/2005)
03/03/2005		Received Return Receipt of [3] Order to Answer, as to Attorney General, which was served by Certified Mail # 70032260000741765350, on 3/1/2005. (lb,) (Entered: 06/10/2005)
03/03/2005		Received Return Receipt of [3] Order to Answer, as to Carlos Osorio, which was served by Certified Mail # 70032260000741765343, on 2/28/2005. (lb,) (Entered: 06/10/2005)
03/03/2005		Received Return Receipt of [3] Order to Answer, as to District Attorney's Office Bronx County, which was served by Certified Mail # 70032260000741765367, on 2/28/2005. (lb,) (Entered: 06/13/2005)
04/19/2005	<u>4</u>	ORDER that respondent shall provide a copy of petitioner's trial transcript to petitioner as soon as it is available to respondent. (Signed by Judge Denny Chin on 4/15/05) (cd,) (Entered: 04/21/2005)
05/03/2005	<u>5</u>	MEMO ENDORSEMENT on application for appointment of counsel. Application denied. (Signed by Judge Denny Chin on 5/2/05) (dle,) (Entered: 05/05/2005)
05/03/2005	<u>6</u>	ORDER. Pro se plaintiff Carlos Osorio has filed an application for the appointment of counsel. Based on an initial review of the petition, and considering the factors governing appointment of counsel set forth in Hodge v. Police Officers, 802 F.2d 58, the Court determines that petitioner has not made the requisite "threshold showing of merit." Accordingly, petitioner's application is denied without prejudice to renewal at a later stage of the litigation (Signed by Judge Denny Chin on 5/2/05) (yv,) (Entered: 05/05/2005)
06/27/2005	<u>7</u>	ORDER that petitioner shall inform the Court, and provide a copy to the Bronx District Attorney's Office, of the status of his 440.10 motion within 30 days after recvng an acknowledgment from the state court. (Signed by Judge Denny Chin on 6/21/05) (cd,) (Entered: 06/28/2005)
11/17/2006	<u>8</u>	ORDER; the petitioner has procedurally defaulted on is ineffective assistance of counsel claim and may not proceed with this claim in his habeas petition; Petitioner may proceed with the rest of his federal habeas claims; the stay, which the Court issued on February 18, 2005, is now lifted; respondent shall file an answer or other pleading in response to the petition no later than December 15, 2006, and petitioner may file any reply papers no later than January 19, 2007. (Signed by Judge Denny Chin on 11/16/06) (dj,) (Entered: 11/20/2006)
12/04/2006	<u>9</u>	ENDORSED LETTER addressed to Judge Chin from Rither Alabre dated 11/21/06 re respondent request for an adjournment of 90 day until 3/15/07 to file a response: application granted, but only until 2/16/07. (Signed by Judge Denny Chin on 12/1/06) (cd,) (Entered: 12/05/2006)

12/04/2006		Set Answer Due Date purs. to [9] Endorsed Letter, as to James Conway answer due on 2/16/2007. (cd,) (Entered: 12/05/2006)
01/30/2007	10	ORDER this Court's previous order is modified such that petitioner's federal habeas petition may proceed with his ineffective assistance of counsel claim; respondent shall file an answer or other pleading in response to the petition no later than February 26, 2007. Any arguments that respondent may wish to make regarding exhaustion may be included in that response; and petitioner shall file any reply papers no later than March 26, 2007. Responses due by 2/26/2007. Replies due by 3/26/2007. (Signed by Judge Denny Chin on 1/26/2007) (jmi) (Entered: 01/31/2007)
02/21/2007	11	AFFIDAVIT of Rither Alabre in Opposition re: [1] Petition for Writ of Habeas Corpus. Document filed by James Conway. (jmi) (Entered: 02/27/2007)
05/07/2007	12	ORDER: The request for a stay assuming it is such a request is DENIED. While the habeas petition includes a claim for ineffective assistance of appellate counsel. The Court does not have jurisdiction to determine which avenues of relief petitioner wishes to pursue in State Court. Thus, petitioner may pursue whatever remedies are available to him under State Law, including a petition for a writ of error coram nobis to the State Appellate Division regarding the issue of ineffective assistance of appellate counsel. The Court, however, will decide petitioner's habeas petition as it now stands. Indeed, the petition has been pending now for nearly two and a half years. (Signed by Judge Denny Chin on 5/4/07) (js) (Entered: 05/08/2007)
07/17/2007	13	OPINION # 94928: the petition for a writ of habeas corpus is denied. Because petitioner, has not made a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. The Clerk of the Court is directed to enter judgment accordingly and to close this case. (Signed by Judge Denny Chin on 7/17/07) (cd) Modified on 7/19/2007 (rw). (Entered: 07/18/2007)
07/17/2007		Transmission to Judgments and Orders Clerk. Transmitted re: 13 Memorandum & Opinion,, to the Judgments and Orders Clerk. (cd) (Entered: 07/18/2007)
07/18/2007	14	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion dated July 17, 2007, the petition for a writ of habeas corpus is denied; accordingly, the case closed; the Court finds that because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue; the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Opinion dated July 17, 2007 would not be taken in good faith. (Signed by J. Michael McMahon, clerk on 7/18/07) (ml) (Entered: 07/18/2007)
08/16/2007	15	NOTICE OF APPEAL from [14] Clerk's Judgment. Document filed by Carlos Osorio. Copies sent to attorney(s) of record: Attorney General, NYS.(tp) (Entered: 08/20/2007)
08/16/2007		Appeal Remark as to [15] Notice of Appeal filed by Carlos Osorio. \$455.00 APPEAL FEE DUE. IFP REVOKED 7/17/07. COA DENIED 7/17/07. (tp) (Entered: 08/20/2007)
08/20/2007		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: [15] Notice of Appeal. (tp) (Entered: 08/20/2007)
08/20/2007		Transmission of Notice of Appeal to the District Judge re: [15] Notice of Appeal. (tp) (Entered: 08/20/2007)